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ABSTRACT

Suspension is often an inappropriate remedy for discipline problems since the students being suspended are inevitably those who most need to be retained in school. Other discipline methods that reinforce positive behavior warrant the consideration of school and civil authorities. Restitution, which allows juveniles to compensate for damages they have caused, is one approach that has gained favor in juvenile courts. It is particularly successful in cases of property damage. However, under the equal protection clause of the Fourteenth Amendment, administrators of such a program may not arbitrarily determine who should or should not be admitted. Guidelines have been developed in some areas to insure nondiscriminatory placement. Another approach to discipline is parent liability. Under certain circumstances, parents can be held financially responsible for their children's intentionally destructive acts. Since it is difficult to establish a causal connection between parents' behavior and the harm caused by their children, many states have enacted "no fault" parent liability statutes, hoping to encourage parents to supervise their children more carefully. School administrators should always make efforts to involve parents in discipline problems and seek the cooperation of local civil authorities in cases of serious, intentional harm to persons or property. (WD)

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A Legal Memorandum

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Some Alternatives to School Discipline: Parental Liability and Restitution

Each year, principals are reminded in national opinion polls and direct experience that the number one concern of parents with the school continues to be discipline. Principals share this concern, of course, not because they are lovers of order and quiet, but because without a certain amount of discipline, education cannot take place. The courts also understand this, and have long supported its attainment.

But despite broad public acceptance legal recognition of student rights has narrowed the methods, and thus the degree, of maintaining disciplinary control. Other factors, such as the extensive use of buses as the sole means of transporting students to school and teacher contracts which mandate shorter hours have tended to limit the use of after-school detention as a technique of disciplining. For serious breaches of the school code virtually the only disciplinary measure available is suspension, usually for a week or two, rarely more than for the balance of the school term. Because the students who require discipline are inevitably the very ones who need to be retained in school the most, educators are all too aware that suspension is often an inappropriate remedy.

There have always been other possibilities, of course, which lie outside the realm of the school and the powers of its personnel to enforce. Unfortunately, in most cases, the civil authorities have been limited to proceedings leading to commitment in juvenile detention facilities. Often, where this remedy seems inappropriate or where space in such facilities is limited, the only other remedy has been probation and an order to return to school. In all too many cases neither of these remedies has been found to be effective in reforming the behavior of the offender.

In some parts of the country, however, imaginative juvenile courts and other juvenile authorities are experimenting with discipline methods that are designed to reinforce more positive behavior. These approaches are being applied in civil cases involving behavior which may occur outside of the realm of school authorities, although much of this behavior (petty theft, assault and battery, vandalism) occurs at school as well.

School and civil authorities should consider these approaches, which might be more effective than commitment, probation, or school suspension, and which could be undertaken on a cooperative basis.

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Restitution—A Just Compensation

One approach which appears to be gaining considerable favor by juvenile courts is the use of work programs that allow juveniles to make restitution for damages they have caused. Judges and legislators agree that these programs are consistent with the rehabilitative goal of the juvenile justice system.

The following hypothetical situation illustrates the restitution concept. It involves a 16-year-old high school student who was taken into custody by the local police for allegedly breaking 100 windows at an abandoned building in his community. The youth, whom we shall call Roy, has no previous court record. Damage to the building is estimated to be $500. The report of Roy's case is forwarded to a youth services intake worker for investigation and recommendation of an appropriate disposition. The investigation leads the intake worker to believe the boy is responsible for the damage, and the worker suggests the case be pursued.

If this jurisdiction is without a restitution program dispositional alternatives are limited. The youth could be placed on probation, either informally under an agreement with the youth services agency, or formally by court order after an adjudication of delinquency. Probation might prevent future delinquent conduct, but the owner of the building would still suffer a financial loss, and little would have been done to make the boy responsible for his actions.

If court intervention is found to be necessary, and Roy is adjudicated delinquent, he may be placed in a residential facility for rehabilitation. The danger of placing Roy in such a facility is the probability of his being in the company of serious juvenile offenders who have become hardened through repeated contact with the juvenile justice system.

Had Roy's state adopted the restitution concept and instituted a work program Roy's case might have been handled quite differently. He might have been selected for the program because it was his first offense, and because there was substantial property damage. He then might have gone to work in a store, cafeteria, or factory. He might even have enjoyed a sense of accomplishment, taking pride in becoming a member of the working force as an "insider" rather than an alienated "outsider" throwing rocks at windows.

The benefits of a restitution program are apparent. The inequity which results from crimes involving monetary loss to a victim or community at large is resolved by allowing that victim or community to benefit from the adolescent's services. But more importantly, the program makes the juvenile offender fully responsible for his actions by requiring him to work off his debt. The youngster becomes very aware of the amount of time and energy required to earn the money necessary to fulfil his financial obligation.

In relation to our hypothetical situation, Roy may be more reluctant to break windows in the future after balancing the temporary pleasure derived from the act with the approximately 160 hours of work at minimum wage needed to pay for the damage he caused.

Restitution programs have often been cited as the solution to teenage crime against property and, indeed, there are many benefits to be derived from such programs. However, the various mechanisms by which the myriad of restitution programs around the country are implemented are not without their pitfalls.

Equal Protection Issues

Restitution programs are generally small and restrictive in scope and able to serve only a limited number of adolescents. When juveniles like Roy are selected for participation in a restitution program, they are usually chosen from a much larger group of offenders.

A clear constitutional concern of a program director is that the program should not discriminate among juveniles in violation of the equal protection clause of the 14th Amendment. Because the alternative to restitution may be adjudication of delinquency and residential placement, and denial of liberty is at issue, the programs may not arbitrarily determine who should be admitted and who should be excluded.

In many areas guidelines have been developed to ensure that placement in a program is not discriminatory. Selection criteria are based on the type of offense and the social history of the youth.

Of critical concern when discussing equal protection is the possibility that a juvenile offender like Roy may be found ineligible for the program because of his inability to find a job and pay for the damage he caused. The U. S. Supreme Court has stated that the Constitution prohibits a state from imposing a fine as a sentence, and then automatically converting it into a jail term solely because the defendant is indigent and cannot pay.[1] This might be a problem if Roy cannot find a job or loses the job he has due to conditions beyond his control. If this happens, it would be cruel to revoke probation and send Roy to a juvenile institution. Community or volunteer service should be made available to deal with this possibility. Perhaps the local library needs someone to stack the books, or the recreation department could use someone to teach youngsters basketball.

In a case of school vandalism by a student, an assignment to repair the damaged property at the school would be particularly appropriate.

One good reason to keep certain juveniles out of such a program is poor health. The physical and mental health of the juvenile should be considered. Is the youth physically healthy enough to work and emotionally sound enough to get along with others? Certain types of juvenile offenders may be ruled out because of the nature of their offense; i.e., alcoholism or drug abuse.

Due Process Issues

Any discussion of the concept of restitution must include consideration of the due process clause of the 14th Amendment, which prohibits a state from taking away a person's property or liberty without due process of law. Since restitution

programs compel a juvenile to give up his property (i.e., money) or liberty (i.e., requiring the performance of specific work), the youth's constitutional rights to due process must be protected throughout the duration of the program.

If restitution is used in pre-adjudicatory programs where youths like Roy have not as yet been found guilty, extreme care must be taken to ensure that they are not coerced into entering the program. The "if you work off the damages we will forget about the whole incident" approach is not appropriate. Roy must understand that he can ask for a formal due process hearing if he believes he is not guilty of the offense.

Due process is again important at the dispositional (sentencing) stage of more formal proceedings. The rights of the juvenile at this stage are not governed by any hard and fast rules; however, the minimum due process that is generally recognized for the individual offender in sentencing proceedings is the right to counsel and the right to refute inaccurate pre-sentence reports. Thus, if Roy was afforded a hearing, found guilty of breaking the windows, and assigned to a restitution program to fulfil his probationary requirements, he could challenge the placement if it were based in inaccurate reports of the damage he had caused.

Informal Consent—Knowledge of the Program; Other Issues

Where a juvenile like Roy is given the option of participating in a restitution program, the details of the program should be made clear. Roy must be told what the job entails and how long he must work to pay off his debt. The key factor is that the juvenile should understand the requirements of the restitution order and the conditions of probation. In short, the juvenile should be fully aware of what he is agreeing to do.

Most restitution programs include internal procedures for dealing with minor infractions of the restitution order, since it would be impractical and inefficient to involve the court every time the offender is late to work or fails to make one payment.

What about Roy's school work during the time he is involved in the restitution program? Must it suffer as Roy accommodates to a heavy work schedule? Most programs recognize that since the primary goal is rehabilitation the youngster's schooling comes first. Many programs would insist that Roy work no more than 20 hours a week so that he could spend the remaining time studying and just enjoying "growing up."

Some programs have incentives: (a) allowing the youth to keep a small portion of his earnings and extending the period of time to be worked; or (b) allowing the youth to complete his commitment earlier than scheduled by working weekends and overtime if such an arrangement does not interfere with schooling. These programs take the approach that motivation is essential and that juveniles like Roy must see some light at the end of the tunnel.

The main emphasis in restitution programs should be on improving the youngster's character and self-esteem: compensating the victim or society is a secondary goal. School administrators can offer considerable help in selecting appropriate candidates for such programs and even in administering them through the schools in cases of school vandalism.

Parental Liability

Prior to the early 1950s, it was quite rare for parents to be held liable when their children injured others or destroyed property. Recently, however, individuals who have been harmed have made inroads in the common law concepts that have traditionally protected parents from liability. Courts have given weight to certain rather innovative legal considerations in their attempts to prescribe equitable remedies for victims. For example, parents have been held financially responsible for their children's intentionally destructive acts, when it could be shown that:

A. The children were acting as agents for the parents in the traditional master-servant relationship. For example, when children are using the family car to run an errand for parents, parents will be held liable. The "family purpose doctrine," extending this agency concept, was developed to allow victims of teenage drivers to collect damages from the adolescent's parents. The doctrine states that, if the head of the household gives express or implied permission for his or her children to drive the family car, the parents may be held liable should a child injure someone while driving. An exception to the rule exists when the minor's use of the car substantially departs from what was expected and authorized by the parents; i.e., if the car is used for racing.[2]

B. Parents directed, ratified, or "okayed" the child's actions by accepting the benefits of the behavior; for example, when a parent spends money known to have been stolen by his or her child.

C. Children were entrusted with a dangerous instrumentality. The definition of a dangerous instrumentality depends on the age of the child who is given it, his judgment, and experience. An air rifle or BB gun may be viewed as dangerous and irresponsible to give to an eight-year-old, but a 12-year-old may be capable of using it properly.[3]

D. Parents were aware of their child's destructive tendencies and did not act in a reasonable and prudent way to prevent the child from inflicting harm. Under the law, a parent has a duty to exercise reasonable care in order to prevent a child from harming others, if the parent knows of the necessity to exercise such control and has the ability to do so.[4] However, as children grow up and become more independent, the ability to anticipate their actions and control them diminishes. Courts do take this fact into consideration. A court generally will not hold a parent accountable for injurious actions of his child, unless it can be shown that the child had a habit of acting in a way that led to the specific injury in question.[5]

The need for proof of this type of specificity is illustrated in a recent case, Parsons v. Smithey[6], in which a 14-year-old boy viciously undressed, cut, and beat an old woman and her daughters for a small sum of money. His parents were aware that he had previously thrown rocks at a woman when she had refused to remove her clothes; he had run away from home several times; and he had started

several fires, stolen articles, and been apprehended for joyriding. His school counselors had recommended psychiatric care. Nonetheless, the parents in the Parsons case were not held liable because they could not foresee that the boy would commit such a violent act.

The question arises—even if the parents could anticipate that a child would commit such a brutal act, could they have done anything, short of institutionalization, to prevent the child from committing it?

Suppose the parents had obtained psychiatric treatment for the child and watched him carefully. This would not eliminate the possibility that on the way to school or church, or in the course of some other activity, he would become vicious and hurt an innocent bystander.

Vandalism Statutes

The common law remedies mentioned above seem woefully inadequate in providing financial help to the victims of teenage delinquent behavior because it is so hard to establish a causal connection between the parents' behavior and the harm caused by their children. In response to the inadequacy of these remedies, most states have sought to more fully compensate injured victims and, at the same time reduce the amount of juvenile delinquency by enacting "no fault" parental liability or "vandalism" statutes. In order to recover under these statutes, victims need not establish a connection between the parents' behavior and their child's misconduct. Instead, they must only prove that the child's actions were intentionally harmful. Liability in these situations is generally limited to $300-$500.

The statute passed by the Pennsylvania legislature is typical:

> Any parent whose child under the age of 18 years is found liable or is adjudged guilty by a court of competent jurisdiction of a wilful, tortious act resulting in injury to the person, or theft, destruction or loss of property of another, shall be liable to the person who suffers the injury, theft, destruction or loss to the extent hereinafter set forth.[7]

Such statutes have been challenged on constitutional grounds. Parents have alleged that they violate the due process and equal protection clauses of the Constitution. They claim that a fair hearing should be afforded the parent, at which time he should be able to argue that there were mitigating circumstances, and these circumstances should relieve him of liability. Parents also argue that they were denied equal protection in that parents, as a class, are singled out and discriminated against by making them responsible for acts that they did not commit.

In most instances constitutional challenges to "no fault" parental liability statutes have been unsuccessful. In Kelly v. Williams,[8] the court upheld the constitutionality of a Texas statute. The court said that the statute was a reasonable use of the state's police power to ensure the health and safety of

the community. Juvenile delinquency could be prevented, it was maintained, by a statute that encouraged parents to supervise their children. In addition, the statute, making parents the limited insurers of their children, was far more equitable than depriving the victim of any compensation.

In a novel approach to ensure parental involvement one author has proposed a model statute that would automatically hold parents accountable for negligence or irresponsibility in supervising and controlling the children found to be delinquent.[9] The rationale for holding parents liable in these instances would be that their children have become, by virtue of their adjudication as delinquents, burdens on the state. Once the parent has placed such a burden on the state, the state may take action against the parents to the extent that they are guilty of the delinquent behavior. Thus, a "no fault" approach is ruled out, giving parents a chance to show there were mitigating circumstances that might relieve them of responsibility.

This approach suggests that parental actions alleged to have contributed to the minor's delinquent behavior should be written into the delinquency petition. If these allegations could be proven, by showing a lack of supervision, for example, parents would be found responsible, in part, for the child's harmful act. They would then be required to (a) compensate the victim, (b) enroll in court-ordered family counseling programs, and (c) actively participate in their child's probationary activities. (This is one way to involve parents in the rehabilitation treatment ordered for their delinquent children. This type of parental involvement is often essential if their children are to change their lifestyles and become law-abiding citizens.)

On the other hand, it can be argued that holding parents responsible for the harm their children cause may lead to stress in the family where relationships are already strained to the breaking point. Parents may retaliate against children who get them in trouble with the law. Also, children who wish to get their parents in trouble may "act out" purposely to achieve this end. In addition, parents may react to a statute which uses the traditional "contributing to the delinquency of a minor" in this novel way by making every effort to establish their child's innocence in court, even if a finding that the child is in need of rehabilitative treatment may be in his best interest. Thus, such a statute may have a serious effect on the juvenile justice system, which has rehabilitation as its primary goal.

Conclusion

There is no question that many parents are lax in carrying out their duty to supervise their children. Often innocent bystanders become the victims of destructive, and even vicious, adolescent behavior. No doubt, it would be best to involve the parents of these teenagers in programs that will help them to guide and control their children. It might be appropriate to make parents the insurers of their children to a certain extent so that victims will receive some financial compensation. Thus, parents—fearing this penalty—will be more motivated to control their children's behavior.

Recommendations

1) Remember that the primary disciplinary responsibility of school administrators--and the scope of their authority--is limited to the school and the maintenance of its educational program. You are not expected, nor often permitted, to exercise disciplinary powers over students for other kinds of behavior.

2) Even in situations directly related to the school, efforts should always be made to involve parents, and to make them aware of their responsibility--legal as well as moral--for the conduct of their minor children. Such responsibility often includes financial liability for vandalism or other intentional harm to property or persons.

3) For serious acts of intentional harm to persons or property, administrators should seek cooperation with local civil authorities such as juvenile court judges and other officials to explore the possibility of correcting student behavior in positive ways outside of the school disciplinary framework. Approaches such as monetary restitution, accompanied by work for community institutions, are some of the alternatives to institutionalization or probation.

References

[1] *Tate v. Short*,401 U.S. 395 (1971)
[2] See *Cross v. Whitley*, 319 F. Supp. E.D.N.C. (1967)
[3] See *Lane v. Chatham*, 251 N.C. 400, 111 SE 2d 598 (1959)
[4] (Restatement Second of Torts) 316 (1966)
[5] See *Cressen v. Goodwill*, 80 So. 2d 701, Fla. (1955)
[6] 109 Arizona 49,504 P 2d 1272 (1973)
[7] Pa. Stat. Ann. Tit. 11, § 2202 Purdon Supp. (1977)
[8] 346 SW 2d 424 Texas Civ. App. (1961)
[9] Fam. Law Quarterly, Col. 6(2), p. 145

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